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December 6, 2021

VIA E FILING

David Butler, Esquire

Chief Hearing Officer

South Carolina Public Service Commission

101 Executive Center Drive

Columbia, SC 29210

RE: Kiawah Island Utility, Inc. to File Proposed Changes in Rates, Charges,
 Classifications and/or Regulations for Water and Sewer Service.
 Docket No. 2021-324-WS

Dear Mr. Butler:

Thank you for the opportunity to comment on the Public Service Commission Clerk's proposed procedural schedule in the above captioned docket. Kiawah Island Utility, Inc. ("KIU" or "Applicant") suggests revisions to the Clerk's proposed schedule as follows:

Hearing Date	4/18/2022
Intervention Deadline	2/14/2022
Newspaper Publication Date	12/23/2022
Notice to Customers Deadline	1/25/2022
Customer Public Hearings	4/11/2022
KIU Direct Testimony	2/1/2022
Intervenors Direct Testimony	3/1/2022
KIU Rebuttal Testimony	3/29/2022
Order Due Date	5/30/2022

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You will note that KIU proposes to maintain the Clerk's intervention, newspaper publication and notice to customers deadlines. However, KIU's prefiling deadlines and hearing proposal differ from that suggested by the Clerk.

KIU proposes to set the Applicants prefiled direct deadline February 1, 2022. KIU proposes a prefiling deadline for direct testimony for the Office of Regulatory Staff ("ORS") and Department of Consumer Affairs ("DCA") of March 1, 2022. Moving the prefiling deadline for filing Applicant's direct forward to February 1, 2022, provides the ORS, DCA and other intervenors thirty days from service of KIU's direct to file direct testimony, including rebuttal testimony of KIU's direct testimony. In addition, the proposed schedule allows ORS and DCA ample opportunity to conduct discovery in the docket before having to prefile direct testimony. Indeed, the ORS has already served two sets of data requests on KIU, to which KIU has begun to provide responses. Last, KIU proposes a deadline of March 29, 2022, for prefiling Applicant's rebuttal testimony. Intervenors often introduce new factual issues in their direct testimony and because S.C. Code Ann. Reg Sections 103-833 B and C permits these parties twenty days to respond to discovery, the Applicant should be entitled to conduct discovery between intervenor direct and Applicant's rebuttal to permit it to fully respond to intervenor testimony. KIU proposes public hearings the week of April 11, 2022, and the final hearing the week of April 18, 2022.

For the reasons hereinafter set out, KIU proposes no surrebuttal testimony in this docket, unless ordered by the Public Service Commission. KIU has the burden of proof in this docket. Under South Carolina law, the party with the burden of proof has the right to open and close the presentation of evidence. Rule 43(j). SCRPC. Rule 43(j) provides as follows:

Rule 43(j) Right to Open and Close. The moving party upon a motion shall have the right to open and close argument, and the plaintiff shall have the right to open and close upon the trial: except that a party admitting the adverse party's claim in his pleading, and taking upon himself the burden of proof, shall have the like privilege. The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter.

Because KIU has the burden of proof and because neither ORS nor DCA is likely to admit the allegations of the application, KIU should have the last word.

Surrebuttal is not the norm in civil practice. It is only appropriate in cases in which the party with the burden of proof raises new matters in its rebuttal testimony. *See Camlim v. Bi-Lo, Inc.*, 311 S.C. 197, 200, 428 S.E.2d 6, 7 (Ct. App. 1993) (per curiam). Moreover, the South Carolian Supreme Court has held that surrebuttal is in the discretion of the Public Service Commission. *Palmetto Alliance, Inc., v. South Carolina Public Service Commission*, 282 S.C.430, 439, 319 S.E.2d 695, 700 (1984)

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This Commission has noted that surrebuttal testimony is discretionary and should be limited in scope. Order No. 2021-357, Docket No. 2005-83-A, at 1-2 (May 18, 2021) (noting “the opportunity to present surrebuttal testimony is discretionary with the Commission”); Order No. 2020-431, Docket No. 2019-281-S, at 3-4 (July 6, 2020).

Further, were the Commission to grant the intervenors the unfettered right to file surrebuttal, giving parties an opportunity to introduce new evidence in surrebuttal testimony without allowing the party with the burden of proof adequate time to file a motion, conduct discovery, or offer its own rebuttal evidence is fundamentally unfair. This practice conflicts with fundamental principles of due process as articulated in South Carolina case law, which requires that utilities be given a meaningful opportunity to respond to evidence. *Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 107, 708 S.E.2d 755, 761 (2011).

For example, when the deadline for filing surrebuttal testimony is less than 10 days before a hearing, it is impossible to file a written motion or issue discovery in compliance with the Commission’s regulations. *See* S.C. Code Ann. Regs. 103-829 & -833.

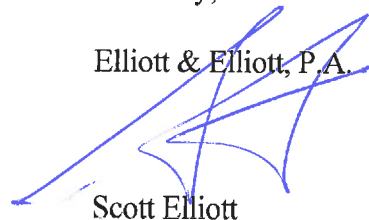
Moreover, the ORS and DCA have the opportunity to present rebuttal testimony in their direct testimony. The recent case of *In Re Palmetto Wastewater Reclamation*, Docket No. 2021-153-W is a case in point. In that docket, both the ORS and DCA got two bites of the apple. Both the ORS’ and DCA’s expert witnesses submitted rebuttal testimony of the applicant’s expert in direct testimony filed September 30, 2021. Subsequently, although neither witness testified that the applicant had introduced new evidence in its rebuttal, both the ORS and DCA experts filed surrebuttal testimony October 28, 2021. There is no justification under South Carolina civil law for this practice.

Under KIU’s proposal, the Public Service Commission retains the discretion to permit the intervenors to file surrebuttal testimony if the Applicant raises new issues of fact in its rebuttal testimony.

For the reasons set out, KIU respectfully submits a proposed schedule set out above.

Sincerely,

Elliott & Elliott, P.A.



Scott Elliott

SE/lbk

cc: All parties of record via Electronic Mail

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them via Electronic Mail, and return address clearly marked on the date indicated below:

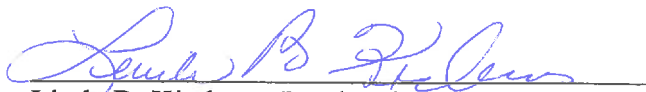
RE: Application of Kiawah Island Utility, Inc. for Adjustment of Rates and Charges (Increase) and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service
Docket No. 2021-324-WS

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PLEADINGS: LETTER

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